XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT:

Devprasad @ Boya,
Aged about 22 years,
S/o Bhogaluram Ghasia,
R/o Kalyanpur Aura Para,
Police Station: Surajpur,
District: Surguja (M.P.)
(now C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh,
Through the Jailer,
District Jail First Class,
Bilaspur (M.P.) (now C.G.)

Present:

Mr. Rajesh Jain, counsel for the appellant.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Division Bench: Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.

ORAL JUDGMENT

(Delivered on 14th March, 2007)

L.C. BHADOO, J.

The accused/appellant has preferred this criminal appeal questioning legality and correctness of the judgment of conviction and order of sentence dated 14-5-1998 passed by the Additional Sessions Judge, Manendragarh, in Sessions Trial No.259/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

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364 & 302 of the I.P.C. for kidnapping in order to murder and committing the murder of Urmila, a girl child of about 4 years age, sentenced him to undergo R.I. for ten years and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for two years and to undergo imprisonment for life and pay a fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for three years, respectively.

Case of the prosecution is that on 13-1-1994 the accused/ appellant went to the house of Pawan and his wife Kamlavati, who is niece of the accused/appellant. On 13-1-1994 at about 11 a.m. when Kamlavati went to village market to purchase soap, her 4 years' daughter namely, Urmila also left the house following her mother. Thereafter, the accused leaving behind his shoes & lungi also left the house. When Kamlavati returned to her house, Pawan inquired about the whereabouts of Urmila, then Kamlavati replied that Urmila had not gone along with her. Search was made and the whereabouts of Urmila could not be traced out. During the search, Sushila @ Ruggi (PW-11) informed the parents of Urmila that she saw the accused while taking Urmila along with him. When the whereabouts of the accused and Urmila could not be traced out, Pawan, father of the girl child, lodged the report Ex.P-4 in Police Station: Manendragarh on 16-1-1994 at 10.30 a.m. After registering the case, the Station House Officer took up the investigation. He went to the house of Pawan and seized one lungi and a pair of plastic shoes of the accused under Ex.P-1 from the house of Pawan. The accused was arrested on 9-2-1994. While in

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police custody, he gave memorandum Ex.P-2 regarding the place where he concealed the body of Urmila and in pursuance of that, bones and clothes of Urmila were seized at the instance of the accused under Exs.P-3 & P-6. The Investigating Officer prepared the site plan (Ex.P-5) of the place of occurrence. Bones were sent for examination to Community Health Centre, Manendragarh, where Dr. R.S. Bhojak (PW-13) examined and gave his report Exs.P-7 & P-8 and referred to the Chief Medical Officer. Inquest Ex.P-9 on bones & clothes of the deceased were prepared. Bones were sent to Medical College, Raipur, where Dr. D.C. Jain conducted test of bones and gave his report Ex.P-10 in which he opined that bones are of a human, female child aged 4-6 years, cause of death and time of death cannot be assessed from the material supplied.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Manendragarh, who in turn committed the case to the Sessions Judge, Surguja, from where learned Additional Sessions Judge, Manendragarh, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 16 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that the witnesses have deposed against him at the instance of the Police, he does not want to say anything.

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Learned Additional Sessions Judge after hearing counsel for respective parties and perusal of the record, convicted and sentenced the accused as aforementioned.

We have heard Mr. Rajesh Jain, learned counsel for the appellant and Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

In this case there is no direct or ocular evidence. Whole case rests on the circumstantial evidence. As per the settled law for resting conviction based on the circumstantial evidence as has been held by the Apex Court in the matter of **Dhananjoy Chatterjee vs. State of W.B.** reported in **(1994) 2 SCC 220**:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

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In the present case, the prosecution has tried to establish charges against the accused on the following circumstances: -

1. That, the accused is uncle of Kamlavati, wife of Pawan and mother of deceased Urmila. On 13-1-1994, the accused came to the house of Pawan & Kamlavati.

2. That, on 13-1-1994 at about 11 a.m. when Kamlavati left the house for market to purchase goods from grocery shop, Urmila also followed her and thereafter, the accused/ appellant also left the house.

3. That, the accused left his lungi & plastic shoes at the residence of Pawan.

4. That, the whereabouts of the accused as also of Urmila could not be traced out, even the accused was not found in the hotel at Khongapani where he was working. The accused was arrested on 9-2-1994.

5. That, Sushila @ Ruggi (PW-11) saw the accused taking Urmila along with him on the date of incident.

6. That, the accused gave memorandum Ex.P-2 regarding the place where he concealed body & clothes of the deceased and in pursuance of that, skull bone and other bones of the deceased as well as clothes of the deceased were recovered from the place of occurrence.

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7. That, Dr. D.C. Jain, Forensic Medicine Department, Medical College, Raipur, gave his opinion that the bones which were recovered from the place were of a child aged about 4-6 years.

8. That, the accused has not given any explanation regarding his abscondence.

As far as the first circumstance is concerned, Pawan (PW-1) has stated in his evidence that in the year 1994 on the occasion of Makar Sankranti, when a fair of Sidh Baba was going on in their village on 13th January, the accused came to their house, they provided him food because he is their relative. This fact has not been challenged in the cross-examination of this witness. Kamlavati (PW-6) has also stated in her evidence that as the accused is her father's brother in near relation, he used to come to their house and in the morning of the fateful day, he came to their house, she provided food to him. She has not been cross-examined on this aspect. Therefore, from the above evidence of these two witnesses, it is established that in the morning of the fateful day the accused came to the house of Pawan & Kamlavati.

As far as the second circumstance is concerned, Pawan (PW-1) has stated in his evidence that after finishing meal, his wife left to purchase soap from grocery shop, his daughter Urmila, aged about 4 years, also followed her. He has further stated that the accused also left the house. In cross-examination he has stated that Urmila left the house after some time when his wife left the

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house. Kamlavati (PW-6) has stated in her evidence that when she returned from the shop, her husband inquired about the whereabouts of Urmila, then she said that Urmila had not accompanied her, the accused was also not at the residence, therefore, they started searching the whereabouts of their daughter. Pawan has stated that his daughter did not return, thereafter, search was made. Therefore, from the above evidence, it is established that when Kamlavati left the house, after some time, Urmila also left the house, thereafter, the accused also left the house and thereafter, he had not returned to the house of Pawan.

As far as the third circumstance is concerned, Pawan (PW-1) has stated that the accused had left his house barefoot leaving behind his shoes and lungi. When the matter was reported, the Investigating Officer came and seized lungi & pair of plastic shoes under Ex.P-1 from the house of Pawan which has been proved by Pawan and he has stated that lungi & shoes were seized by the Investigating Officer under Ex.P-1 which bears his signature from 'A' to 'A'. S.N. Tripathi (PW-10), Sub Inspector, has stated in his evidence that in the year 1994 he was working as Assistant Sub Inspector in Police Station: Manendragarh and on 16-1-1994 he seized one lungi & pair of shoes of the accused under Ex.P-1. Therefore, it is established that lungi & pair of shoes of the accused were seized from the house of Pawan on 16-1-1994 which were left by the accused at the residence of Pawan.

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As far as the fourth circumstance is concerned, Pawan (PW-1) has stated in his evidence that the accused left the house just after his daughter left his house. The accused had not returned, therefore, he raised suspicion and started searching the whereabouts of the accused & Urmila. One Sushila @ Ruggi (PW-11), who runs a tea stall on a wooden trolley on the corner of Ahmed Colony, informed him that the accused has taken his daughter and he went towards the river to Mandendragarh city. Pawan made search, but whereabouts of the accused could not be traced. He also went to the hotel of Khongapani where the accused used to work, he enquired from the owner of the hotel, the owner informed him that the accused has left the hotel taking leave in order to go to fair and he has not returned. Thereafter, he searched the accused, but he could not trace the whereabouts of the accused. He went to lodge report in the Police Station. The accused was arrested on 9-2-1994, till then his whereabouts were not known and the accused remained absconded. The accused has not explained anything as to where he remained in those days and why he remained absconded from his duty. Therefore, no explanation has come forth from the accused regarding his abscondence from duty or not returning to the house of Pawan so as to collect his plastic shoes and lungi.

As far as the fifth circumstance is concerned, Pawan (PW-1), father of Urmila, has stated in his evidence that when he went to market in search of Urmila, Sushila @ Ruggi (PW-11), who runs tea stall on a trolley at the corner of Ahmed Colony, informed him that

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the accused has taken his daughter while carrying on shoulders and he went towards the river. He went towards that side and in the Manendragarh market, but he was not able to trace the whereabouts of the accused. In cross-examination, this witness has stated that he had not reported the matter on that day for the reason that he thought that the accused might have taken his daughter for the purpose of playing with her. Thereafter he went to the hotel where the accused was working, there also the accused and his daughter were not available, then he went to his father-in-law's house at Ambikapur, but there also, the accused was not available and he returned only on 15th, thereafter, he reported the matter on 16th. Kamlavati (PW-6), wife of Pawan & mother of Urmila, has stated in her evidence that Ruggi, who runs tea stall, inquired from them as for whom they are searching, on which she disclosed her that their four years' daughter has missed, then Ruggi replied that one person has taken their daughter. They searched for her daughter whole day, but her whereabouts could not be traced.

Sushila @ Ruggi (PW-11) has stated in her evidence that she knows Pawan, his wife Kamlavati and their daughter Urmila, their daughter Urmila was aged about 3 years. The accused, who is uncle of Kamlavati, used to come to the house of Kamlavati & Pawan. 3-4 years back on 14th on the day of festival of Sidh Baba at about 10 a.m. she was sitting on her tea stall as her husband went to collect water, at that time, she saw that accused Boya, present in the Court, was taking Urmila, daughter of Kamlavati &

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Pawan, towards the river. In the evening, Kamlavati & Pawan came to her and inquired about their daughter, she informed them that their uncle Boya has taken Urmila and at that time, Urmila was wearing green frock and two green ribbons.

Mr. Jain, learned counsel for the appellant, argued that Kamlavati (PW-6) has stated in para 4 of her evidence that Sushila @ Ruggi informed them that some person has taken their daughter. When accused Boya was known to Sushila, then why she did not disclose the name of Boya to Kamlavati (PW-6). Therefore, the above fact makes the evidence of Sushila & Kamlavati doubtful.

In order to appreciate the argument advanced by Mr. Jain, learned counsel for the appellant, we have perused the evidence and we find that there is no substance in the argument for the reason that Pawan (PW-1), husband of Kamlavati, has categorically stated that Sushila @ Ruggi informed them that the accused has taken their daughter towards the river and even Sushila @ Ruggi (PW-11) has also corroborated the above evidence of Pawan. Moreover, perusal of the first information report (Ex.P-4) which was lodged by Pawan on 16-1-1994 at 10.30 a.m. reveals that in the same it has been categorically mentioned that Sushila @ Ruggi informed that Boya @ Devprasad has taken their daughter and even on the search made, the whereabouts of the accused are not known. Therefore, the evidence of Sushila @ Ruggi (PW-11) & Pawan (PW-1) in which it has been categorically mentioned that the accused has taken Urmila with him, is corroborated by the first

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information report. In the circumstances, merely the fact that Kamlavati has stated that Sushila @ Ruggi informed them that some person has taken their daughter, does not makes the prosecution case doubtful or weak in the light of the evidence of Pawan (PW-1) & Sushila @ Ruggi (PW-11) as also the first information report (Ex.P-4). Kamlavati (PW-6) has not been cross-examined. Therefore, from the above evidence, it is established that the accused taken the daughter of Pawan along with him. In cross-examination of Pawan (PW-1) & Sushila @ Ruggi (PW-11), defence has not been able to bring any circumstance on record which makes their evidence doubtful.

As far as the sixth & seventh circumstances are concerned, Vijay Singh Parihar (PW-15), City Inspector, has stated in his evidence that on 9-2-1994 he conducted investigation from accused Devprasad, at about 9.25 in the morning, he disclosed that he has concealed the body of Urmila in the drain of Sidh Baba Ghati and he can take them to that place which was reduced to writing under Ex.P-2, the same was given in the presence of Janki Prasad & Krishna Murari. Krishna Murari Tiwari has been examined as PW-2. He has stated in his evidence that Pawan came to him and said that Police is not registering the case, therefore, he went to the Police Station and they registered the report. 8 days thereafter, the Police searched the accused, in his presence as well as in the presence of Janki and the complainant, the accused disclosed that he has concealed the body in the drain, he can get the same recovered which was reduced to writing under

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Ex.P-2, which bears his signature. Defence has not been able to discredit the above evidence in cross-examination. Janki Ram has been examined as PW-5. He has also stated in his evidence that the accused took the Police to the drain from where one sweater, one frock, two ribbons, few pieces of bones and bangles were seized, he put his thumb impression on the seizure memo. Chetram (PW-4) has stated in his evidence that the Police seized the skull bone from the drain under Ex.P-3. This witness has not been cross-examined. Allauddin (PW-12) has stated in his evidence that one day he was going to Manendragarh market, he was passing through the railway bridge, he was called by the Police personnel, the accused was also with them, the Police took the accused near the cave of Sidh Baba and thereafter, the accused took them near the bushes from where, skull bone and frock were seized. The accused himself handover bones & clothes to the Police and the Police prepared the recovery memo Ex.P-6. Vijay Singh Parihar (PW-15) has stated in his evidence that after the information was given, the accused in the presence of Janki Prasad took them to the cave of Sidh Baba where they took Allauddin along with them and after removing the sand of drain, the accused brought out the clothes i.e. sweater & frock, two green colour ribbons, hairs and bone pieces which were seized under Ex.P-6.

Learned counsel for the appellant argued that in the first instance, memorandum Ex.P-2 does not bear the signature of the accused, as such, the same cannot be said to be proved and it

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cannot be said that the accused gave memorandum. Similarly, recovery memo Ex.P-3 does not bear the signature of the accused.

It is true that the memorandum does not bear the signature of the accused, but merely on this ground, when particularly witnesses Krishna Murari Tiwari & Janki Prasad, as also Investigating Officer Vijay Singh Parihar (PW-15) have categorically stated that the memorandum was given by the accused and in cross-examination of these witnesses, defence has not been able to bring any circumstance on record which discredits their evidence, it is established that the memorandum Ex.P-2 was given by the accused.

As far as recovery of clothes and bones are concerned, Allauddin (PW-12) is an independent witness, he has categorically stated in his evidence that clothes and bones were recovered in his presence under seizure memo Ex.P-6 and Ex.P-6 bears the signature of the accused through which clothes of the deceased were recovered at the instance of the accused. This fact has also been proved by Vijay Singh Parihar (PW-15), the Investigating Officer, as also Janki Ram (PW-5).

Learned counsel for the appellant further argued that there is no evidence that the clothes were of deceased Urmila.

In this connection, Dr. R.S. Bhojak (PW-13) has categorically stated in his evidence that the clothes which were brought to him for examination were identified by Pawan Ghasia, father of the deceased.

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In view of the above discussion, it is established that the clothes of the deceased were recovered at the instance of the accused. Moreover, as far as the bones are concerned, as per the report (Ex.P-10) of Dr. D.C. Jain, the pieces of bones were of human and of a girl child aged 4-6 years. Therefore, clothes & bones of the deceased were recovered at the instance of the accused.

As far as the eighth circumstance is concerned, Pawan (PW-1) has stated in his evidence that on the fateful day the accused left the house leaving behind his plastic shoes & lungi and thereafter, he had not returned. Even he searched for the accused at Manendragarh and at his father-in-law's house, as also at the hotel at Khongapani where the accused was working, but the accused was not available there. The accused after leaving the house of Pawan was absconded and his whereabouts were not known, he was arrested on 9-2-1994. During this period, he remained in abscondence and he has not offered any explanation as to where he remained during this period. This circumstance is also admissible against the accused under Section 8 of the Evidence Act and inference can be drawn that he remained in abscondence on account of commission of crime.

For the foregoing reasons, the chain of circumstances is complete and from the above circumstances appearing against the accused, the only irresistible conclusion can be drawn that the accused was the only person who committed the crime and author

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the crime, there is no possibility of committing the crime by any third person.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed. Conviction and substantive sentences imposed upon the accused under Sections 364 & 302 of the I.P.C. are maintained, however, looking to the financial status of the accused, sentence of fine is reduced to Rs.100/- (Rupees one hundred only) on each count, in default of payment of fine, he shall suffer one month simple imprisonment on each count.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Soma